



California Fair Political Practices Commission

January 13, 1989

Victor J. James, II
Littler, Mendelson, Fastiff & Tichy
455 Capitol Mall, Suite 420
Sacramento, CA 95814-4405

Re: Your Request for Advice
Our File No. A-88-469

Dear Mr. James:

You have requested advice on behalf of board members Paul E. Stefani, Milo Wetzel and Rosemarie Butler of the River Delta Unified School District Board of Trustees concerning their responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

This letter addresses only the duties of the school board members under the Act. There may be other restrictions imposed by other statutes, such as Government Code Section 1090. The district attorney and the Attorney General are responsible for enforcing Section 1090.

QUESTION

The spouses of board members Paul E. Stefani, Milo Wetzel and Rosemarie Butler are employed by the River Delta Unified School District (the "District") and are members of the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

certificated bargaining unit for collective bargaining purposes. May the board members participate in a decision to ratify a collective bargaining agreement affecting the certificated employees including their spouses?

CONCLUSION

Under the Act, the board members may participate in the decision to ratify the collective bargaining agreement affecting the certificated employees including their spouses.

FACTS

You have indicated that you understand, based on Section 82030(b)(2) and Regulation 18702.1(c)(2) (now renumbered as Regulation 18702.1(c)(1)) that a board member does not have to disqualify himself or herself with regard to a decision solely related to a spouse's salary, per diem, or reimbursement for spouses from the District. You are concerned, however, since the collective bargaining agreement for school district employees covers many aspects of compensation. In addition to salary, the agreement includes health benefits, deferred compensation, tax sheltered annuities, life insurance, leaves, etc.

ANALYSIS

In the past the Commission has held that pension benefits received from a county are not income within the meaning of Section 82030(a). In its opinion, the Commission noted:

When an employee agrees to work for the county, he is entitled to certain benefits which comprise his compensation. He receives, for example, a monthly salary, vacation and sick leave and retirement benefits [A]s the California Supreme Court has observed, retirement benefits, such as pension, "do not represent the beneficent (sic) gratuities of the employer; they are, rather, part of the consideration earned by the employee." In other words, the pension payment serves as a remuneration for services rendered by the employee" A pension, therefore, is essentially a type of deferred salary whereby an employee agrees to receive a smaller payment while working in exchange for the security of receiving the remaining portion of his compensation after he retires.

In re Moore, (1977) 3 FPPC Ops. 33, 36 (citations and footnote omitted, emphasis added).

Victor J. James II
January 13, 1989
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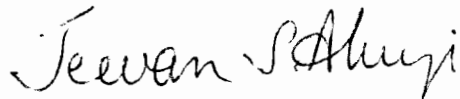
The analysis in Moore, supra, is applicable to other fringe benefits as well such as health benefits, deferred compensation, tax sheltered annuities, life insurance, leaves, etc. These fringe benefits are part of salary in that the employee agrees to receive a smaller payment in exchange for receiving the remaining portion of his compensation by way of these fringe benefits. Thus, if such fringe benefits are part of a compensation package paid by a government agency, they are included within the term salary in Section 82030(b)(2). Accordingly, the three members of the River Delta Unified School District Board of Trustees may participate in the decision to ratify a collective bargaining agreement affecting the certificated employees including their spouses. However, they may not participate in decisions to hire, fire, promote, demote, or discipline an official's spouse, or to set a salary for an official's spouse which is different from salaries paid to other employees of the spouse's agency in the same job classification or position. (Regulation 18702.1(c)(1), copy enclosed.) See also Saint-Evens Advice Letter, No. A-83-172, and Flitner Advice Letter, No. A-87-096 (copies enclosed).

Although the Act may not require disqualification from a particular decision, other statutory provisions, such as Government Code Section 1090, may restrict the board members ability to participate in the decision. The Commission, however, does not administer this section. We are, therefore, unable to give you any advice regarding Section 1090.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosures

LITTLER, MENDELSON, FASTIFF & TICHY

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December 28, 1988

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Diane Griffiths
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attention: Jeevan Ahuja, Esq.

Re: Advisory Opinion on Conflict of Board of
Trustee Voting on Collective Bargaining
Agreement When Spouse is an Employee of
The District

Dear Mr. Ahuja:

In our telephone conversation of today, you requested that our firm provide you with the names of the three members of the River Delta Unified School District Board of Trustees, whose spouses are employed by the District, referenced in our letter of December 5, 1988.

Please be advised that our request for an advisory opinion is made on behalf of Messrs. Paul E. Stefani and Milo Wetzel and Mrs. Rosemarie Butler.

Dec 29 8 17 AM '88
FPPC

LITTLER, MENDELSON, FASTIFF & TICHY

Diane Griffiths
December 28, 1988
Page 2

If you have any further questions, please do not
hesitate to contact us.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Victor J. James, II". The signature is fluid and cursive, with a large initial "V" and a stylized "J".

VICTOR J. JAMES, II

VJJ:gp
193Jx.541

cc: Mr. Robert Tomasini, Superintendent
River Delta Unified School District

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December 15, 1988

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Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Attention: Jeevan Ahuja, Esq.

Re: Advisory Opinion on Conflict of
Board of Trustee Voting on Collective
Bargaining Agreement When Spouse is
An Employee of the District

Dear Mr. Ahuja:

This is to confirm our telephone conversation of December 14, 1988, wherein I asked that the FPPC modify our request for an advisory opinion from the Commission, as set forth in our letter of December 5, to a formal advice letter consistent with 2 California Code of Regulations section 18329. We ask that the FPPC issue a formal advice letter in light of your representation to me that it is not likely that the Commission will accept our issue for review.

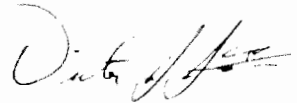
It is my understanding that we may expect a formal advice letter within the next twenty one (21) working days. If

LITTLER, MENDELSON, FASTIFF & TICHY

Ms. Diane Griffiths
December 15, 1988
Page 2

you have any further questions, please do not hesitate to contact us.

Very truly yours,

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VICTOR J. JAMES, II

VJJ:gp
186Jx.541

cc: Mr. Robert Tomasini, Superintendent
River Delta Unified School District

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December 5, 1988

Fair Political Practices Commission
Legal Division
P.O. Box 807
Sacramento, California 95804

Re: Advisory Opinion On Conflict
Of Board Of Trustee Member
Voting On Collective Bargaining
Agreement When Spouse Is An
Employee Of The District

Gentlepersons:

We represent the River Delta Unified School District in Sacramento County. Three of the seven members of the District Board of Trustees have spouses who are employed by the District and are members of the certificated bargaining unit for collective bargaining purposes.

The District has requested us to draft an opinion on whether a board member may participate in a decision to ratify a collective bargaining agreement affecting certificated employees, including his or her own spouse. We have reviewed relevant provisions of the Fair Political Practices Act, regulations, and your advisories 8-83-227 and 8-85-122 on this subject.

We understand that a board member does not have to disqualify himself or herself with regard to a decision related solely to the spouse's salary, per diem, or reimbursement for expenses from the District (Government Code Section 82030(b)(2) and 2 Cal. Code of Regulations, Section 18702.1(c)(2)).

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F.P.P.C.

Fair Political Practices Commission
December 5, 1988
Page 2

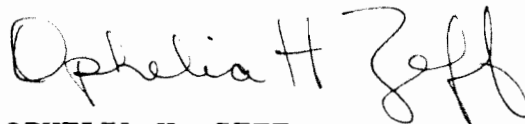
Collective bargaining agreements for school district employees universally cover many aspects of "compensation" in addition to "salary, per diem, or reimbursement for expenses." Examples include health benefits, deferred compensation, tax sheltered annuities, life insurance, leaves, etc. Furthermore, the Board of Trustees has no means to isolate ratification of "salary" as opposed to "items of compensation" in discussing or ratifying a collective bargaining agreement.

In light of this practical problem, we ask that the FPPC provide the District, and indirectly all school districts, with an advisory opinion on whether Government Code Section 82030(b)(2) and/or Title 2, California Code of Regulations, Section 18702.1(c)(2) may be interpreted to authorize a board member to participate in a decision related solely to approval of a collective bargaining agreement for District employees which includes the "compensation" of a spouse as that term has been described herein.

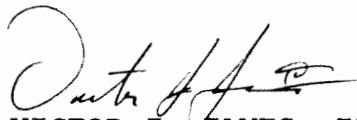
Without such a clarification, it would appear that the purpose of the above-cited section, regulation and prior advisory opinions by the FPPC, have no practical application to a governmental entity which establishes employee "compensation" through collective bargaining.

If you have any further questions, please do not hesitate to contact us.

Very truly yours,



OPHELIA H. ZEFF



VICTOR J. JAMES, II

TF/tp

351E.487

cc: Mr. Robert Tomasini, Superintendent,
River Delta Unified School District

12/14 Telecon w/ Victor James.

He agreed that after reviewing
a copy of Advice Letter No. A-85-242
and the Commission's Opinion on In re
Moore 36PPC 33 that the subject
matter lends itself to an advice
letter. He will mail a ~~new~~ letter
modifying his earlier request for
an Opinion & asking instead for a
formal Advice letter.

12/10

Talked to Victor James. In response to a previous call to him asking him to find out whether they need an opinion from the Commission, or whether they need an advice letter, Mr. James said that they had concluded they need an opinion from the Commission because

① In the previous advice letter, ~~the~~ the subject of benefits being lumped with and therefore deemed salary has not been considered - so this is a unique situation

② If they get an advice letter, it would apply to only one individual school district - they represent a number of school districts each facing the same situation - therefore more appropriate to ask for an opinion so that it would apply to all of them.

LITTLER, MENDELSON, FASTIFF & TICHY

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December 15, 1988

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BALTIMORE, MARYLAND

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BENJAMIN W. HAHN

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804

Attention: Jeevan Ahuja, Esq.

Re: Advisory Opinion on Conflict of
Board of Trustee Voting on Collective
Bargaining Agreement When Spouse is
An Employee of the District

Dear Mr. Ahuja:

This is to confirm our telephone conversation of December 14, 1988, wherein I asked that the FPPC modify our request for an advisory opinion from the Commission, as set forth in our letter of December 5, to a formal advice letter consistent with 2 California Code of Regulations section 18329. We ask that the FPPC issue a formal advice letter in light of your representation to me that it is not likely that the Commission will accept our issue for review.

It is my understanding that we may expect a formal advice letter within the next twenty one (21) working days. If

LITTLER, MENDELSON, FASTIFF & TICHY

Ms. Diane Griffiths
December 15, 1988
Page 2

you have any further questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Victor J. James, II". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

VICTOR J. JAMES, II

VJJ:gp
186Jx.541

cc: Mr. Robert Tomasini, Superintendent
River Delta Unified School District

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December 28, 1988

Diane Griffiths
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attention: Jeevan Ahuja, Esq.

Re: Advisory Opinion on Conflict of Board of
Trustee Voting on Collective Bargaining
Agreement When Spouse is an Employee of
The District

Dear Mr. Ahuja:

In our telephone conversation of today, you requested that our firm provide you with the names of the three members of the River Delta Unified School District Board of Trustees, whose spouses are employed by the District, referenced in our letter of December 5, 1988.

Please be advised that our request for an advisory opinion is made on behalf of Messrs. Paul E. Stefani and Milo Wetzel and Mrs. Rosemarie Butler.

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LITTLER, MENDELSON, FASTIFF & TICHY

Diane Griffiths
December 28, 1988
Page 2

If you have any further questions, please do not
hesitate to contact us.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Victor J. James, II". The signature is fluid and cursive, with a large initial "V" and a stylized "J".

VICTOR J. JAMES, II

VJJ:gp
193Jx.541

cc: Mr. Robert Tomasini, Superintendent
River Delta Unified School District

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BENJAMIN W. HAHN

December 5, 1988

Fair Political Practices Commission
Legal Division
P.O. Box 807
Sacramento, California 95804

Re: Advisory Opinion On Conflict
Of Board Of Trustee Member
Voting On Collective Bargaining
Agreement When Spouse Is An
Employee Of The District

Gentlepersons:

We represent the River Delta Unified School District in Sacramento County. Three of the seven members of the District Board of Trustees have spouses who are employed by the District and are members of the certificated bargaining unit for collective bargaining purposes.

The District has requested us to draft an opinion on whether a board member may participate in a decision to ratify a collective bargaining agreement affecting certificated employees, including his or her own spouse. We have reviewed relevant provisions of the Fair Political Practices Act, regulations, and your advisories 8-83-227 and 8-85-122 on this subject.

We understand that a board member does not have to disqualify himself or herself with regard to a decision related solely to the spouse's salary, per diem, or reimbursement for expenses from the District (Government Code Section 82030(b)(2) and 2 Cal. Code of Regulations, Section 18702.1(c)(2)).

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Fair Political Practices Commission
December 5, 1988
Page 2

Collective bargaining agreements for school district employees universally cover many aspects of "compensation" in addition to "salary, per diem, or reimbursement for expenses." Examples include health benefits, deferred compensation, tax sheltered annuities, life insurance, leaves, etc. Furthermore, the Board of Trustees has no means to isolate ratification of "salary" as opposed to "items of compensation" in discussing or ratifying a collective bargaining agreement.

In light of this practical problem, we ask that the FPPC provide the District, and indirectly all school districts, with an advisory opinion on whether Government Code Section 82030(b)(2) and/or Title 2, California Code of Regulations, Section 18702.1(c)(2) may be interpreted to authorize a board member to participate in a decision related solely to approval of a collective bargaining agreement for District employees which includes the "compensation" of a spouse as that term has been described herein.

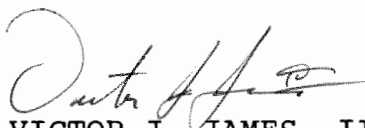
Without such a clarification, it would appear that the purpose of the above-cited section, regulation and prior advisory opinions by the FPPC, have no practical application to a governmental entity which establishes employee "compensation" through collective bargaining.

If you have any further questions, please do not hesitate to contact us.

Very truly yours,



OPHELIA H. ZEFF



VICTOR J. JAMES, II

TF/tp
351E.487

cc: Mr. Robert Tomasini, Superintendent,
River Delta Unified School District



California Fair Political Practices Commission

December 21, 1988

Victor J. James, II
Littler, Mendelson, Fastiff
& Tichy
455 Capitol Mall, Suite 420
Sacramento, CA 95814-4405

Re: 88-469

Dear Mr. James:

Your letter requesting advice under the Political Reform Act was received on December 16, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
Diane M. Griffiths
General Counsel (LS)

DMG:plh